

MODIFICATION OF CONTRACT

OF

Rutland Railroad Company,

WITH

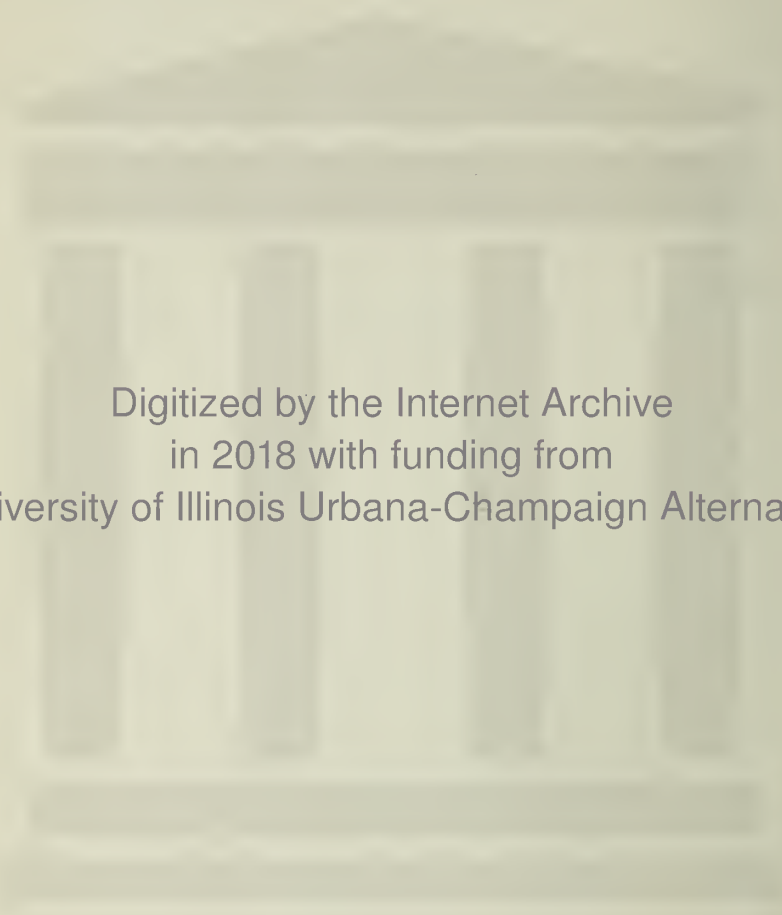
Central Vermont Railroad Company,

(TRUSTEES AND MANAGERS.)

FEBRUARY 25, 1876.



RUTLAND:
TUTTLE & COMPANY, PRINTERS,
1876.



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MODIFICATION OF CONTRACT
RUTLAND RAILROAD CO. WITH CENTRAL VERMONT RAILROAD COMPANY,
(TRUSTEES AND MANAGERS.)
February 23th, 1876.

WHEREAS, A certain contract in writing dated December 30, 1870, was heretofore entered into by the Rutland Railroad Company of the first part, and J. Gregory Smith, Joseph Clark, Worthington C. Smith and Benjamin P. Cheney, Trustees and Managers of the Vermont Central and Vermont and Canada Railroads of the second part, which is hereby referred to as part hereof:

And whereas, the Rutland Railroad Company executed to said J. Gregory Smith and others as Trustees and Managers, a certain assignment of leases dated January 30, 1871, which was accepted in writing by said Trustees and Managers, which assignment and acceptance are also hereby referred to as a part hereof:

And whereas, said Trustees and Managers for the purpose of securing the payment of the rent provided by the terms of said contract to be paid the said Rutland Railroad Company, drew their two several orders in favor of said Rutland Railroad Company, to wit: one upon the Connecticut River Railroad Company, and one upon the Cheshire Railroad Company, both dated January 30th, 1871, and both accepted by the respective companies upon which they were drawn; which orders and acceptances are referred to as part hereof:

And whereas, the court of chancery for Franklin County by its order made upon the petition of said Trustees and Managers in the cause wherein said Trustees and Managers were appointed and acting, dated January 5, 1871, did approve, ratify and confirm the action of said Trustees and Managers in entering into said contract and drawing said orders, and did otherwise order and decree in the premises, which is also hereby referred to and made a part thereof:

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And whereas, said Trustees and Managers by a certain agreement in writing, dated February 12, 1873, which was also approved by another order of said court in said cause, dated February 28, 1873, surrendered certain of the lines of railroad, dock and personal property connected therewith, referred to in said contract of December 30, 1870, and situated in the State of New York, and also the steamer Oakes Ames, upon certain terms and conditions as therein provided, which agreement and order are also referred to as a part hereof:

And whereas, the Central Vermont Railroad Company has heretofore, by an order of the court of chancery in Franklin County, made in said cause, on the 21st day of June, 1873, been substituted and appointed Receiver and Manager in the place and stead of the above named J. Gregory Smith and others, and since the 1st day of July, 1873, said Central Vermont Railroad Company has been in possession of said Rutland Railroad and other leased roads, as well as of the Vermont Central and Vermont and Canada Railroads and the personal property connected therewith, as the successor of said Trustees and Managers, to which proceedings and order or the files therein reference is hereby made as a part hereof:

And whereas, certain controversies have arisen between said Rutland Railroad Company and the Central Vermont Railroad Company, successor in said Trust, as aforesaid, touching the rents due and to become due to said Rutland Railroad Company under said contract of December 30, 1870, assignment of leases and orders drawn and accepted as aforesaid, as well as in respect to said Addison Railroad and various other matters:—

Now, for the purpose of effectually settling and terminating said controversies and all of them, and every and all matters of dispute, claim or question of every name, nature or description, that can, or may now exist between said Rutland Railroad Company and said J. Gregory Smith and others, Trustees and Managers as aforesaid, or said Trust whereof they were Trustees and Managers, or the Central Vermont Railroad Company successor in said Trust as Receiver and Manager, and in consideration of the settlement and adjustment of all such disputes, and controversies:

It is hereby mutually covenanted and agreed, by and between said Rutland

Railroad Company of the first part, and said Central Vermont Railroad Company, Receiver and Manager as aforesaid, and in its capacity of Receiver and and Manager only, of the second part, as follows:

ARTICLE 1. From and after the 1st day of February, 1875, the party of the second part hereto agrees to pay to the party of the first part as rent for the use, management and control of said Rutland, and Addison Railroads and the property connected therewith, or with either, the sum hereinafter mentioned, which shall be ascertained as follows: The gross earnings of the Vermont Central, Vermont and Canada, Rutland, and Addison Railroads shall be semi-annually added together. Of the aggregate sum so arrived at there shall be set apart thirty-six and one fourth per cent thereof as the share of said Rutland and Addison Railroads of said gross earnings; out of which share the party of the second part may retain seventy-five per cent as an agreed proportion for the payment of all expenses of operating said Rutland, and Addison Railroads, and maintaining said roads, their structures and equipment in good order and condition, and keeping the same in repair, and of all other expenses, incumbent upon the party of the second part in the operation of said railroads, under and as provided in said contract of December 30, 1870; And said party of the second part shall pay over to the party of the first part, as hereinafter provided, the balance being twenty-five per cent of said thirty-six and one fourth per cent. *Provided*, however, and said party of the second part hereby agrees, and does hereby guarantee that the amount ascertained as aforesaid and payable to the party of the first part, shall amount to not less than the sum of two hundred and fifty thousand dollars for each and every year, commencing February 1st 1875, during the continuance of said contract as modified hereby. And the party of the second part hereby covenants, promises and agrees to and with the party of the first part, to pay said annual sum of two hundred and fifty thousand dollars, and in addition thereto, the sum of eight thousand dollars annually, as provided in said contract of December 30, 1870, for the purpose of keeping up the organization of said Rutland Railroad Company and of paying the incidental expenses thereof.

Said sums to be paid in equal monthly installments and on the last day of each month during the time said party of the second part shall hold and possess said railroads under said contract as modified hereby. And it is hereby further understood and agreed that if in any year said twenty-five per cent of said thirty-six and one fourth per cent gross earnings of said Vermont Central, Vermont and Canada, Rutland, and Addison Railroads shall exceed said sum of two hundred and fifty thousand dollars, the amount of such excess shall be paid to the party of the first part by the party of the second part, semi-annually, and within thirty days from and after the 1st days of January and July in each year. The party of the second part also agrees to keep accurate accounts of said gross earnings, and the books and vouchers pertaining to said accounts are to be open to the inspection and examination of the President and Treasurer of said party of the first part, or either of them. The foregoing provisions of this article to be in lieu of and to stand in place of the provisions of said contract of December 30, 1870, in relation to the rents payable for the use of said Rutland, and Addison Railroads, but are not to affect the provisions of article 9 of said contract of December 30, 1870.

ARTICLE 2. In addition to said rents, payable for the use of the Rutland, and Addison Railroads as aforesaid, the rents for the use of the Vermont Valley, and Vermont and Massachusetts (Branch) Railroads shall be paid to the Rutland Railroad Company by the party of the second part in equal monthly installments, and on the last day of each month during the time said party of the second part shall remain in possession of said roads or either of them under said contract as hereby modified, and at the several rates respectively provided in and by said contract of December 30, 1870. Provided however, if it shall be decided that the party of the second part, does not, or cannot legally hold and possess said Vermont Valley Railroad under the claim or title derived from said party of the first part, and said party of the second part, or their successors, shall be compelled to pay for the use of said road and property therewith connected to the Vermont Valley Railroad Company of 1871, their successors, or to other parties interested in said company, then and in such case, the party of the second part shall be entitled to retain from any sums

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due or to become due to said party of the first part as rent for said Rutland, and Addison Railroads, such sums as it may be compelled to pay, to an amount not exceeding the amount paid the said party of the first part for the use of said Vermont Valley Railroad.

ARTICLE 3. Payments under the order dated January 30, 1871, above referred to, and drawn on the Cheshire Railroad Company in favor of said party of the first part, shall be forthwith resumed at the rate of twenty thousand dollars per month as therein provided; and the order dated as aforesaid, and also above referred to, and drawn on the Connecticut River Railroad Company in favor of said party of the first part, is hereby reduced, and shall be for the amount of eleven thousand and five hundred dollars per month, until the 1st day of December, 1880, and thereafter for the sum of twelve thousand dollars per month, and payable monthly as therein provided, and payments for said reduced amounts shall be forthwith resumed: but said payments under said orders shall be made to the party of the first part in such manner as not to prevent the present method of daily settlements between said Receiver and Manager and said Cheshire and Connecticut River Railroad Companies. Said last named Companies however, upon such daily settlement, retaining in their hands respectively amounts sufficient to make the monthly payments to said party of the first part as aforesaid, and said orders shall not be revoked but shall stand as a continuing security for the payment of the rents herein stipulated to be paid and shall be treated as a material part of this agreement.

ARTICLE 4. All other provisions, stipulations, promises, covenants and conditions, not herein expressly modified, which are contained in said contract of December 30, 1870, and in the assignment of leases dated January 30, 1871, shall stand and remain in full force and effect, and they shall apply to said contract as hereby modified with the same effect as if herein contained and expressed, or at large set forth; and all liens and securities therein created, and confirmed and ratified by said court shall stand and remain in full force, as well as said order of said court confirming said contract. Provided that in case the title to the said Valley Road, derived by said contract of December 30th, 1870, and the aforesaid assignment of leases is invaled since the first day of June, 1875, then the said party of the second part, or their predecessors in said trust,

are to have and make no claim or demand, or to have any right of action whatever therefor against said Rutland Railroad Company, or any other person or party, except to receive back the rents paid to them therefor and as aforesaid.

ARTICLE 5. This modification of the agreement aforesaid is to be ratified by the stockholders of said Rutland, and Central Vermont Railroad Companies as soon as may be, and the party of the second part shall forthwith procure it to be ratified and confirmed by the court of chancery aforesaid, upon due notice to all parties interested; and until so ratified and confirmed, it shall not in any way affect any right of either party hereto, or defeat any legal proceeding now pending. Upon such ratification and confirmation, the several suits and petitions brought, one in favor of the party of the first part, two by James S. Whitney, and one by James W. Emery and others, and all pending in Franklin County court of chancery, and the suit of Sohler and Schultz pending in the United States Circuit court, and all other suits and petitions relating to the existing controversies as affecting the parties hereto, so far as either of the parties hereto can control the same, are to be discontinued without cost.

ARTICLE 6. Upon the ratification of this agreement by the stockholders of the Rutland, and Central Vermont Railroad Companies respectively, it shall be executed in duplicate and delivered, and full settlement had of the rents as herein provided.

ARTICLE 7. The confirmation by the court of chancery above referred to shall be procured within twenty days from this date, and the notes and other securities contemplated to be executed by the party of the second part, (which in the mean time are to remain in *escrow* in the National Bank of Redemption in the city of Boston,) shall be thereupon delivered to the party of the first part, and all cash payments then due shall be thereupon made to the party of the first part—otherwise this contract to cease and be of no effect.

IN TESTIMONY WHEREOF, the said Rutland Railroad Company has caused this instrument to be signed by their President, John B. Page, thereto authorized, who has hereto set his hand and affixed the seal of said Company, and the said Central Vermont Railroad Company, Receiver and Manager, as aforesaid, have also caused this instrument to be signed by their President, J. Gregory Smith, thereto authorized, who has hereto set his hand and affixed the seal of said Company, on this 25th day of February, A. D. 1876.